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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 202

WILLIAM WEIDLICH,

Petitioner,

vs.

ESTATE OF LOUIS WEIDLICH (THE FIRST NATIONAL BANK AND TRUST COMPANY OF BRIDGEPORT AND ARTHUR M. COMLEY, EXECUTORS) AND HETTY S. WEIDLICH

REPLY BRIEF OF PETITIONER

Respondents assert in their first point that petitioner was not denied due process because the allegations of the widow's application were found by the Probate Court to be true. That argument must fail, for it rests on a false premise. Both the Superior Court and the Supreme Court of Errors explicitly held that the Probate Court's order was granted upon the petition of the *executors* (R. 16, 26, 37) and not upon the widow's.

The allegations of the executors' petition, by which this litigation was initiated, state that a prior [*ex parte*] order had been entered by the Probate Court granting the widow an allowance, that payments thereunder had been made to her and that the estate was not settled (Ex. A, R. 37).

Nothing was said of the widow's need for support or her dependency upon the estate. The requirements of § 7033, General Statutes of Conn. (1949), were conveniently ignored by the executors and the court. Furthermore, the prior order referred to, dated August 15, 1950, was *ex parte* and was entered without notice to the remaindermen and without any opportunity for a hearing.

The accuracy of the Probate Court's finding that the allegations of the *executors'* petition were true cannot be questioned. Of course, an *ex parte* order was previously entered for an allowance in the same court and $15,000 was concededly paid to the widow thereunder (R. 21, 22). But petitioner's contention is that such decision, basing the grant of the further allowance on the mere fact that the same award had been previously made *ex parte,* is not due process.

Petitioner should not be deprived of his property in the estate except in accordance with the settled law construing §7033 and after notice of hearing. He had no adjudication on the merits of the necessity for any allowance. The court simply failed to enforce §7033, which was obviously enacted for the protection of remainder interests. Due process is not observed in basing an order for an allowance on the mere existence of a prior *ex parte* order, of which the interested property owners had no notice and no opportunity to oppose.

Similarly in the Superior Court, where trial *de novo* was had, and in the Supreme Court of Errors there was no determination on the merits. Both opinions of those courts are devoid of discussion of the merits of the application under §7033. In "confirming" the order appealed from the Superior Court made the following findings:

> (1) The widow received almost $292,000 from the estate and other sources (R. 21, 23).

(2) No evidence of her need for support or of dependency was offered (R. 22).

(3) The prior *ex parte* grant of allowance and payments thereunder was a reason assigned for granting the further allowance (R. 22).

(4) That the allowance requested, if not warranted by §7033, could be paid pursuant to paragraph third of the will (R. 22).

Acting upon the third and fourth findings, *supra*, the Superior Court held that payment of $1,250 a month to the widow was authorized by the will even *if* no order had been entered in the Probate Court (R. 21, 17). The requirements of §7033 were again disregarded. As we have said, the merits were never adjudicated in any of the three Connecticut courts through which the case has passed. Yet, respondents say that petitioner cannot complain because the appellate courts refused to "*reconsider*" the merits of the case!

Petitioner has been accorded the mere form of two trials and appeals. His property is taken from him on the alleged basis of a prior *ex parte* order to the same effect, as to which there was no notice and no hearing. We say that such procedure is a manifest denial of due process and ought not to be condoned by this Court.

The recent case of *Shelley* v. *Kraemer* (334 U. S. 1) holds that the 14th Amendment is directed against state action and does not reach private conduct. There, however, the private agreements containing restrictive covenants were judicially enforced in the state courts and thus were brought within the operation of the 14th Amendment. There it was said, *per* the late Mr. Chief Justice Vinson:

> "The action of state courts in imposing penalties or depriving parties of other substantive rights without providing adequate notice and opportunity to defend, has, of course, long been regarded as a denial of

the due process of law guaranteed by the Fourteenth Amendment. *Brinkeroff-Faris Trust & Sav. Co.* v. *Hill*, 281 U. S. 673, Cf. *Pennoyer* v. *Neff*, 95 U. S. 714."

The foregoing reasoning is applicable here.

Petitioner is deprived of his property on the allegation that the same amount was taken out of the estate pursuant to a prior *ex parte* order therefor. He was deprived on entry of the prior order of his right to notice, and was afforded no opportunity to defend.

In the instant case the Connecticut courts have signally failed to enforce the statutory law which protects petitioner's property interests. The hearings accorded to him were sham. The denial of due process is plain.

The Ruling of the Supreme Court of Errors

In *Bankers Trust Co.* v. *Blodgett* (260 U. S. 647, 649) an appeal taken from a Connecticut judgment, this Court said "It is the views and reasoning of the Supreme Court of Errors that must engage our attention as they constituted the foundation of the judgment of the Superior Court."

The reasoning of that court rests on the hypothesis that if it should reverse the Superior Court, then the same sums would become payable to the widow under the will so that the pecuniary loss to petitioner would be the same in either event. In that view, the court concluded that petitioner was not an aggrieved party (R. 30).

This reasoning is unique in our experience and deprives petitioner of his property by an adjudication which turns on a hypothetical premise. Secondly, it effectually deprives petitioner of his substantive right to questioning in open court on the final accounting of the executors any payments made to the widow as legacies or bequests. Not only is the privilege of defending against such payments denied to

petitioner but the propriety thereof is prejudged against him without notice or hearing of the issue. Such judicial juggling, we submit, constitutes denial of due process.

The Supreme Court of Errors, while refusing to pass on questions of substantive local law, ruled on the constitutional question raised by petitioner there and below. It disposed of the federal question before it by describing the petitioner's argument thereon as "tenuous, unconvincing and without support in authority" (R. 29). But no reasons or citiations of authorities supporting that conclusion were given.

We submit, on the record in this case, that in the face of the palpable denial of due process to petitioner, no reasoning supporting the contrary conclusion as reached could be found.

Respectfully submitted,

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Counsel for Petitioner.